Supreme Court, U.S.
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No. 86-1091

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ROGER R. LARSON,

Petitioner,

vs.

GENE C. O'CONNELL, FOX PROPERTIES, INC., JAMES A. CHILIGIRIS, A.A. PALOW, CHARLES R. BRILLMAN, GILBERT J. OBERLIN, JOHN DONALDFERRY, BERLE W. BURHENN, AND IVAN TELLEFSON,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the trial court had personal jurisdiction over the Petitioner, Roger R. Larson.

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STATEMENT OF THE CASE

In 1983, a citation issued pursuant to Illinois Revised Statutes, Chapter 110, Section 2-1402 was served upon Petitioner Roger Larson as a corporate officer of judgment debtor, Pharmaco, Inc., a corporation. Said statute sets forth the powers of an Illinois court in passing upon a citation proceeding which powers specifically include, inter alia:

1. The power to compel any third person cited to deliver up assets belonging to the judgment debtor for application against the judgment. Section 2-1402 (B)(3).

2. The power to enter any order against a person cited that could be entered in a garnishment proceeding. Section 2-1402 (B)(4).

3. The power to enjoin any person, whether or not a party to the supplemental proceeding, from making or allowing any transfer or other disposition, etc., of property of the judgment debtor. Section 2-1402 (D)(2).

4. Where it appears any property or interest therein is claimed by any person other than the judgment debtor, the court shall, as in garnishment proceedings, permit such person to appear and assert his claimed right. Section 2-1402 (E).

After receipt of said citation and with constructive notice of the scope of relief the court could enter thereunder, Roger Larson first appeared in court by counsel on November 21, 1983, at which time he requested a continuance which was granted.

On December 7, 1983, Larson personally appeared at which time the court ordered him to submit to a sworn examination and to produce records.

On January 25, 1984, Larson appeared and gave a sworn statement in open court. During the course thereof, an attorney for the Respondents orally asked the court to order Larson to account for funds that he had received from the corporation, which funds were disclosed in the sworn examination. At this juncture, Larson objected to such an order being entered contending that the corporation had ratified his receipt of the funds. The court ordered Larson to render an accounting and continued the proceedings until February 21, 1985.

On February 20, 1985, Respondents filed a motion for leave to file a creditor's bill specifically naming Larson as an additional party pursuant to Section D (1) and (2) of the Illinois Citation Statute, Ill. Rev. Stat., Ch. 110, Section 2-1402.

On February 21, 1985, Larson appeared by counsel on his own behalf and filed a written motion to quash the service of the citation or alternatively to dismiss the citation with prejudice. This motion was ultimately denied on June 4, 1985.

On approximately April 10, 1985, the Respondents filed a motion for judgment or other relief. On April 11, 1985, Roger Larson, again on his own behalf, by counsel, filed a document styled "Brief Setting Forth Citation Defendant's Objections to the Citation Proceeding." On June 4, 1985, the court entered a docket order noting that "Citation Defendant" Roger Larson's Motion to Dismiss with prejudice was denied.

At a hearing on June 13, 1985, Larson appeared pro se. On that date, Respondents filed motions requesting that Larson turn over certain money obtained by him from Pharmaco and requesting

additional information. The request for additional information was allowed and ruling on the request to turn over money was reserved.

On June 20, 1985, Larson filed supplemental answers to the request for production. The lead paragraph of the supplemental answer stated that it was in compliance with the court's order and was being filed by "Roger R. Larson, one of the defendants."

On July 30, 1985, the parties next appeared. At that time, counsel for Larson made an oral motion to withdraw which the court allowed. Larson then proceeded to file a pro se memorandum in opposition to the request to turn over money.

The parties next appeared in court on August 6, 1985, with Larson appearing pro se and filing a document captioned "Answer to Response to Reply Memorandum of Citation Defendant Roger Larson." A hearing was held on all pending motions. At the conclusion of the hearing, Larson was ordered to pay the Pharmaco judgment plus costs and interest within 30 days. On August 29, 1985, Larson individually filed a pro se motion to alter or amend the judgment and a motion for stay of citation proceedings, all of which were denied. On the same date, he orally moved for a change of venue in response to which the court directed the motion be in writing. A written motion for change of venue was never filed, rather on August 30, 1985, Larson filed a notice of appeal.

The foregoing facts are generally summarized in the Appellate Court's opinion contained on pages 2 through 6 of the appendix to the Petition for a Writ of Certiorari herein.

ARGUMENT

MAY IT PLEASE THE COURT:

A court may obtain in personam jurisdiction either through formal service of process or by a party generally appearing before a court. A review of the record correctly led the Illinois Fourth District Appellate Court to conclude that Roger Larson had generally appeared before the trial court and had personally contested the procedure on its merits with knowledge that the Respondents sought to satisfy their judgment against Pharmaco from funds of Pharmaco that Roger Larson had previously taken personal possession of and with knowledge that the proceeding was being conducted pursuant to the Illinois Citation Statute, Ill. Rev. Stat. Ch. 110, Section 2-1402. The statute empowers a court to reach assets belonging to the judgment debtor that are in the possession of a third party. The trial court's action met the due process of law requirements imposed by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A. A COURT OBTAINS PERSONAL JURISDICTION OVER A PERSON WHO GENERALLY APPEARS THEREIN AND CONTESTS MATTERS ON THE MERITS.

It has long been recognized that where a person appears in court and contests matters on the merits that the court has obtained personal jurisdiction over that person and it is not necessary to thereafter make formal service of process to obtain such jurisdiction. *Peoria Tribe or Band of Indians v. Wea Townsite Co.*, 117 F. 2d 940, 942 (10th Cir. 1941); *Nelson v. Jadrijevics*, 59 F. 2d 25, 27 (5th Cir. 1932); *Wefel v. W.P. Brown & Son Lumber Co.*, 58 F. 2d 667, 668

(S.D. Ala. 1932); and *Carcelli v. Order of United Commercial Travelers of America*, 47 F. Supp. 433, 433-4 (W.D. Penn. 1942).

Since early days, this court has uniformly held that "an appearance cures any defect in the service of process." *Farrar and Brown v. The United States*, 28 U.S. 459 (1830); see also *Creighton v. Kerr*, 87 U.S. 8, 12 (1874) and *Atkins v. The Fiber Disintegrating Company*, 85 U.S. 272 (1874).

There is no doubt that Roger Larson had actual notice of the proceeding, had actual notice that the Respondents sought to satisfy a judgment against Pharmaco from funds that Roger Larson was holding, and that they sought to do this through the Illinois Citation Statute which statute empowers a court to attach funds in the possession of a third party and to enter an order requiring a third party to pay a judgment where the third party held funds belonging to the judgment debtor. Clearly, he was advised of the nature of the proceedings. There was a period of almost two years between the date that the citation was initially served on him as corporate officer of Pharmaco and the date the judgment complained of herein was entered against him. During this period, Roger Larson, both pro se and by counsel, made numerous court appearances and filed numerous documents, many of which unequivocably characterized him as a party to the proceeding. Thus, Roger Larson with notice of the proceeding and with notice of the relief sought, entered a general appearance and strenuously defended. Certainly, the requirements of due process were satisfied under the facts of this case. e.g., *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

The Petitioner cites *Pennoyer v. Neff* in support of his Petition. 95 U.S. 714 (1878). In the passage quoted by petitioner, this court in dicta recognized that voluntary appearance in court conferred personal jurisdiction over a defendant. 95 U.S. at 733.

While this statement is helpful to the Respondents herein, nevertheless, they would note that this is merely dicta as the holding of *Pennoyer* was that to obtain in personam jurisdiction by service of process, personal service must be made within the state. While not germane to the issue presented by the Petition for Writ of Certiorari, it is to be noted that this holding of *Pennoyer* was substantially modified by this court in the case of *International Shoe Company v. State of Washington* wherein this Court applied the minimum contacts test in upholding service of process made under a state's long-arm statute. 326 U.S. 310 (1945).

B. THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION.

In his enunciation of questions presented, the Petitioner states that the trial court lacked subject matter jurisdiction as well as personal jurisdiction. In his advancements of reasons for granting the writ, the Petitioner appears to only be questioning an alleged lack of personal jurisdiction. Accordingly, Respondents will not address at length the question of subject matter jurisdiction. Lack of subject matter jurisdiction was raised by the Petitioner in the Illinois Appellate Court. This claim was rejected. Clearly whether the Illinois trial court had subject matter jurisdiction is not a question involving the federal constitution, but is a question involving the Constitution and Statutes of the State of Illinois. Under the

Illinois Constitution of 1970, Article 6, Section 9, and under Ill. Rev. Stat., Ch. 110, Section 2-1402, the trial court clearly had subject matter jurisdiction. See Appellate Court opinion at pages 6 and 7 of Appendix to the Petition for Writ of Certiorari.

CONCLUSION

This case involves whether as a matter of fact the trial court had in personam jurisdiction over petitioner Roger R. Larson by virtue of his general appearance and contesting of the issues. The trial court thoroughly examined the factual situation and correctly concluded that Roger Larson had entered a general appearance, was advised of the issues and in fact defended on the issues. The dictates of due process were met. Accordingly, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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